

RESPECT FOR MARRIAGE ACT

Ms. LUMMIS. Mr. President, I rise today to underscore the crucial importance of the religious liberty provisions in the Respect for Marriage Act, which was just passed by the Senate, and to ensure the legislative intent behind these provisions is crystal clear.

As you know, the U.S. Supreme Court's decision in *Obergefell v. Hodges* from 2015 established a constitutional right to same-sex marriage.

When *Obergefell* was argued, then-Solicitor General Verrilli was asked whether recognizing a constitutional right to same-sex marriage would lead to churches, religious organizations, and other not-for-profits potentially having their tax-exempt status reconsidered in light of the Supreme Court's decision in *Bob Jones University v. United States*. Solicitor General Verrilli responded that "it's certainly going to be an issue."

In recognizing a constitutional right to same-sex marriage in 2015, the U.S. Supreme Court did not reconsider the *Bob Jones University* precedent, leaving this issue unresolved.

The Respect for Marriage Act, with the substitute amendment that I cosponsored with Senators SINEMA, COLLINS, BALDWIN, PORTMAN, and TILLIS, answers this question and a number of others, providing strong protections for religious liberty, especially when combined with the Religious Freedom Restoration Act.

I want to thank my friend, the Senator from Arizona, for her hard work on this bill and her willingness to address key questions around religious liberty in a thoughtful and bipartisan way.

It is my understanding that section 2 of the Respect for Marriage Act, in light of the Supreme Court's *Bob Jones v. United States* decision in 1983, would prevent the Internal Revenue Service from successfully arguing that the United States now has a "national policy" favoring same-sex marriage and would prevent the IRS from using this national policy argument to deny tax-exempt status to religious organizations.

I want to ask my friend, the Senator from Arizona, is this your understanding, as well?

Ms. SINEMA. I thank my friend, the Senator from Wyoming. Yes, this is my understanding. Section 2 of the bill states that a variety of reasonable views on the role of gender in marriage exists today, based on both decent and honorable religious and philosophical beliefs. The bill states that all views are due proper respect by the Federal Government.

Furthermore, section 2 of this bill states the Federal Government recognizes religious liberty as an integral component of our national policy regarding marriage. Section 2 of this bill was explicitly included to ensure that the provisions of the *Bob Jones* case relating to the tax-exempt status of organizations are not applicable to this bill.

Bob Jones University v. United States, decided in 1983 before Congress enacted the Religious Freedom Restoration Act, upheld the IRS's decision to rescind *Bob Jones University's* tax exemption on the basis of a "firm and unyielding" national policy against racial discrimination. Section 2 affirms that diverse beliefs about the role of gender in marriage are held by reasonable and sincere people based on decent and honorable religious or philosophical premises. This finding preempts an analogy between the Court's analysis in the *Bob Jones University* case about race and beliefs about marriage and is a statement of policy respecting diverse views about the role of gender in marriage.

I would like to discuss another provision which is central to this bill: section 4, which grants "full faith and credit" under article IV, section 1 of the U.S. Constitution to marriages performed in each of our States, strengthening federalism and making our constitutional structure work.

Section 4 of the bill states that no person "acting under color of State law" may deny full faith and credit to any "public act, record, or judicial proceeding of any other State pertaining to a marriage between two individuals, on the basis of sex, race, ethnicity, or national origin of those individuals." The phrase "acting under the color of State law" is also used in our civil rights statutes to refer to the actions of State and local government officers and employees with respect to rights guaranteed by the U.S. Constitution and Federal law.

Senator, is it your understanding this phrase is intended to incorporate the U.S. Supreme Court's interpretation of the meaning of "acting under color of State law"?

Ms. LUMMIS. Yes, it is my understanding that use of this phrase in section 4 of the bill is intended to incorporate the U.S. Supreme Court's interpretation of this term, including, but not limited to, the case *Rendell-Baker v. Kohn* and *NCAA v. Tarkanian* cases.

I would like to now turn to section 6 of the bill, which provides that no church or religious nonprofit will be forced to solemnize or conduct a marriage ceremony under this bill.

Is it your understanding that section 6(b) bars "any civil claim or cause of action," without exception, relating to a church or religious organization's refusal to solemnize or celebrate a marriage under this section, and the text does not state that it can be overruled by a court in finding a "compelling governmental interest"?

Ms. SINEMA. Yes, it is my understanding section 6(b) bars any civil claim or cause of action relating to a nonprofit religious organization's refusal under that section to solemnize or celebrate a marriage and that such a refusal cannot create a civil claim or cause of action.

The text of section 7 also makes no reference to "compelling governmental

interests." Section 7 provides nothing in this bill should be construed to deny or alter the benefit, status, or right of an otherwise eligible individual or legal entity in relation to tax-exempt status, tax treatment, contracts, loans, scholarships, licenses, and other agreements not arising from a marriage.

In conjunction with section 2 of this bill, which eliminates a successful analogy to the *Bob Jones* case, is it your understanding, Senator, that section 7 would prevent the Internal Revenue Service from using the Respect for Marriage Act to alter or remove the tax-exempt status of an entity for expressing beliefs in opposition or support of same-sex marriage?

Ms. LUMMIS. Yes, that is my understanding, as well, regarding the scope of section 7.

This bill is intended to enshrine a national policy of respect for all views surrounding marriage and to enact some of the strongest religious liberty protections since the Religious Freedom Restoration Act in 1993. This legislation also ensures that religious liberty will have more of a central role in future debates in our courts and in the Halls of Congress.

I would like to thank my friend from Arizona for her tireless work on these issues and her willingness to work together, as always.

The PRESIDING OFFICER. The Senator from New Mexico.

SAFEGUARD TRIBAL OBJECTS OF PATRIMONY ACT OF 2021

Mr. HEINRICH. Mr. President, I rise today to ask the Senate to send H.R. 2930, the Safeguard Tribal Objects of Patrimony Act, to the President's desk for his signature.

The need for this legislation is pretty straightforward.

In 2016, the Governor of the Pueblo of Acoma learned that a sacred ceremonial shield had been stolen and was about to be sold to the highest bidder in Paris. When Governor Riley informed me about this robbery of the Pueblo's cultural patrimony, I called on the State Department to take all possible action to halt the auction. Thankfully, intense public outcry and diplomatic pressure were enough to halt the illegal sale of a Tribe's cultural patrimony.

Finally, in November 2019, more than 3 years after the shield was put on the auction block, it was voluntarily returned to the Pueblo. However, this only happened because of intense public outcry and notoriety. In most cases like this, the item has been sold or simply disappears into a private collection.

Under current Federal law, it is a crime to sell certain protected Native American cultural objects, things like the Acoma shield, here in the United States. But there is still no Federal law prohibiting the export of stolen cultural items and requiring the cooperation of foreign governments in recovering them.

In many cases, Tribes in New Mexico and across our Nation have been forced to effectively pay a ransom to recover their sacred items or had to stand by and watch the sale of their priceless religious and cultural items in international markets.

The lack of an explicit ban on trafficking these items to foreign countries was actually cited by the French Government when they initially declined to stop the auction of the Acoma shield.

Grave robbing is illegal in every single State in the United States, and yet we allow Tribal religious objects, many of which were stolen literally from grave sites, to be exported and sold in foreign auction houses. We cannot let this loophole that allows foreign trade in Native religious heritage to go on for even one more day, and I would urge my colleagues to pass this bill today and end this awful practice.

Mr. President, as if in legislative session, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2930, which was received from the House and is at the desk; further, that the bill be considered read a third time and passed, and that the motion to reconsider be considered made and laid upon the table.

The PRESIDING OFFICER. Is there objection?

The Senator from Alaska.

Ms. MURKOWSKI. Reserving the right to object, I would like to begin my brief comments here this evening by acknowledging the Senator from New Mexico and agreeing so much with him on this very, very important issue as we seek to protect objects of patrimony, whether in New Mexico or in my State of Alaska or in the home State of the chairman of the Indian Affairs Committee. It has been a travesty and it has been a crime that we have seen many of these objects that have been taken as art collections, that have been taken with no appreciation of the heritage, of the richness, of the tradition, and the respect to the Native people to whom they belong.

And so the STOP Act, or the Safe-guard Tribal Objects of Patrimony Act of 2021, is significant. I am proud to be the lead Republican cosponsor, along with Senator HEINRICH, on this. It is an issue that many in my State have been urging action on.

So I do not rise this evening to object to passage of the STOP Act, but at the same time I am acknowledging the significance of this, I also want to raise another bill that is also very important to my State, H.R. 441. We call it the Don Young Alaska Native Health Care Land Transfers Act.

This is something that I have been working on for several Congresses now, with my friend the late Congressman Young. We took three land transfer bills. We consolidated them into one. We thought it was a pretty simple effort. All we are asking to do is to convey IHS land to two of our Alaska Native Tribal health consortia, as well as

the Tanana Tribe in the interior part of the State.

We passed stand-alone legislation on these three IHS bills earlier this Congress, but instead of passing that legislation, the House did what the House often does. They amended it with technical amendments. They sent it back here as one consolidated bill. That is H.R. 441.

But, again, it is about public health, delivery of healthcare to Alaska Native people in rural and underserved villages, many of which are off the road system. But these simple land transfers would enable construction projects to move forward, to reconstruct and to construct, in some cases, new healthcare facilities to provide care to Alaska Native people, and to also ramp up the delivery of clean, safe drinking water and sanitation facilities in rural villages, which are so key to improving public health.

I think we all would agree that basic services such as water sanitation are pretty important—so everything we can do to help facilitate that. I have pushed the urgent button on these land conveyance issues because time is running out. Construction seasons are very, very limited in Alaska, and so I have been trying to help facilitate that.

I have good commitments from my colleagues who are here on the floor this evening to help us move through this process on our side, or certainly on the House side as well, so that we can see final resolution on the Don Young Alaska Native Health Care Land Transfers Act, and I look forward to working with them on that. And so having said this, I will not object to unanimous consent to advance the STOP Act this evening.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. SCHATZ. With your permission, through the Chair, far be it from me to delay the passage of this law, which I know has been worked on by Native people and staffers for many, many years, but I just wanted to make my private commitment to the Senator from Alaska, the vice chair of the Indian Affairs Committee, public.

We are absolutely committed, one way or another, to passing the Don Young lands act, and I just wanted to make that clear on the Senate floor.

The PRESIDING OFFICER. Is there objection?

Mr. HEINRICH. Mr. President, through the Chair, I just want to take a moment to articulate the same commitment publicly, and we look forward to working with my colleague from Alaska, who has been so helpful in putting the STOP Act to a successful resolution. I look forward to working with her to get the Don Young package moved as well.

The PRESIDING OFFICER. Without objection, it is so ordered.

The bill (H.R. 2930) was ordered to a third reading, was read the third time, and passed.

The PRESIDING OFFICER (Ms. HASSAN). The Senator from Hawaii.

LEGISLATIVE SESSION

MORNING BUSINESS

Mr. SCHATZ. Madam President, I ask unanimous consent that the Senate proceed to legislative session for a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESPECT FOR MARRIAGE ACT

Mr. LEAHY. Madam President, on behalf of Vermonters, today I was proud to vote for the final passage of the Respect for Marriage Act. Today, we became a slightly more perfect union by recognizing the sanctity of marriage between two individuals, regardless of gender or race.

In August of this year, Marcelle and I celebrated our 60th wedding anniversary. Marrying each other was the most important decision of our lives—not a decision taken lightly, but a deeply personal commitment. A decision such as who to spend your life with should not be determined by a State, local, or Federal government. It is regrettable that throughout our history, too many Americans have been denied the right to marry who they love based on their gender or race.

In 2012, I was proud to cosponsor an earlier version of the Respect for Marriage Act to codify the right for all Americans to marry who they love. As chairman of the Judiciary Committee, I also convened the first ever hearing to examine the harmful consequences the Defense of Marriage Act had, and still has, on American families.

I am a proud cosponsor of this version of the Respect for Marriage Act. This bill—as most bills are—is far from perfect, but is a product of a bipartisan compromise. I want to acknowledge my friend from Wisconsin, Senator BALDWIN, whose steadfast resolve is the reason why this bill passed the Senate today. In the face of Supreme Court Justices determined to turn back the clock on basic rights, a group of bipartisan Senators remained committed to the principle that all legally valid marriages between two people who love and care for each other deserve equal treatment under the law everywhere in our country.

My home State of Vermont is no stranger to making history. Vermont has been a pioneer in the movement for LGBTQ rights. In 2000, Vermont became the first State to introduce civil unions and the first to offer a civil union status encompassing the same legal rights and responsibilities as marriage. The State again made history in 2009 when it was the first State to allow same-sex marriage without being required to do so through a court